

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
2 A Limited Liability Partnership
3 Including Professional Corporations
4 MARK G. RACKERS, Cal. Bar No. 254242
5 MELISSA A. FREELING, Cal. Bar No. 327684
6 501 West Broadway, 19th Floor
7 San Diego, California 92101-3598
8 Telephone: 619.338.6500
9 Facsimile: 619.234.3815
10 E mail mrackers@sheppardmullin.com
11 mfreeling@sheppardmullin.com

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13 Attorneys for GREYSTAR CALIFORNIA,
14 INC. and improperly named GREYSTAR
15 REAL ESTATE PARTNERS, LLC

16
17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

19 ZACHARY ZEFF, an individual, on behalf
20 of himself and on behalf of others similarly
21 situated,

22 Plaintiff,

23 v.

24 GREYSTAR REAL ESTATE
25 PARTNERS, LLC, a Delaware Limited
26 Liability Company,

27 Defendant.

28 Case No. 3:20-cv-07122-EMC

CLASS ACTION

**GREYSTAR REAL ESTATE
PARTNERS, LLC'S ANSWER TO
COMPLAINT**

Assigned to: Judge Edward M. Chen
Dept: 5 – 17th Floor

Complaint Filed: October 13, 2020

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Defendant Greystar Real Estate Partners, LLC (“GREP”), hereby answers Plaintiff Zachary Zeff’s (“Zeff’s”) complaint (“Complaint”) and admits, denies, and alleges as follows:

INTRODUCTION

5 1. GREP lacks sufficient information or belief to answer the allegation that it is
6 “the largest owner and operator of apartments in the United States and second largest
7 owner and operator of student housing,” and on that basis denies each and every allegation
8 contained therein. GREP denies that its profits are a result of “numerous and unrelenting
9 fees and penalties that it charges to tenants” and GREP denies that it has or “takes
10 advantage” of a “power imbalance” over its tenants by “thrusting illegal late fee penalties
11 on its tenants, utility fees, utility ‘administration’ fees and penalties, and others, in an effort
12 to squeeze all it can from its tenants[.]” The remaining allegations in paragraph 1 either
13 call for a legal conclusion and no response is required or GREP lacks sufficient
14 information or belief to answer the allegations, and on that basis denies each and every
15 allegation contained therein.

16 2. GREP denies that it manages apartment complexes in California and
17 therefore denies that it charges fees or engages in any of the practices described in
18 paragraph 2.

19 3. GREP denies that it has violated any statutes, including Civil Code § 1671,
20 denies that it has engaged in “illegal” conduct, and denies that it has utilized a “penalty
21 scheme” that is “excessive, and bears no relation to any actual damages incurred by
22 Defendant when rent or other fees are paid late.” The remaining allegations in paragraph 3
23 call for a legal conclusion and no response is required.

24 4. GREP denies that it has violated any statutes, including Civil Code
25 § 1950.5. GREP denies that it manages apartment complexes in California and therefore
26 denies that it “systematically” takes “illegal deductions from tenant security deposits” at
27 “the end of all tenancies,” and denies that it is “uninterested in timely returning tenant

1 security deposit money.” The remaining allegations in paragraph 3 call for a legal
 2 conclusion and no response is required.

3 5. GREP denies that it managed Zeff’s apartment complex during the subject
 4 tenancy and therefore denies that Zeff “rented from [GREP].” GREP also denies that it
 5 charged Zeff any “illegal penalties,” and that it “failed to timely return his security deposit
 6 upon move out or sufficiently document … security deposit deductions.” The remaining
 7 allegations in paragraph 5 either call for a legal conclusion and no response is required or
 8 GREP lacks sufficient information or belief to answer the allegations, and on that basis
 9 denies each and every allegation contained therein.

JURISDICTION AND VENUE

10 6. The allegations in paragraph 6 either call for a legal conclusion and no
 11 response is required or GREP lacks sufficient information or belief to answer the
 12 allegations, and on that basis denies each and every allegation contained therein.

13 7. GREP admits that venue is proper in this judicial district. The remaining
 14 allegations in paragraph 7 either call for a legal conclusion and no response is required or
 15 GREP lacks sufficient information or belief to answer the allegations, and on that basis
 16 denies each and every allegation contained therein.

THE PARTIES

17 8. GREP denies that it managed Zeff’s apartment complex during the subject
 18 tenancy and therefore denies that Zeff “was a tenant of Defendant [GREP]” and that it
 19 engaged in any of the practices described in paragraph 8. The remaining allegations in
 20 paragraph 8 either call for a legal conclusion and no response is required or GREP lacks
 21 sufficient information or belief to answer the allegations, and on that basis denies each and
 22 every allegation contained therein.

23 9. GREP admits that it is a Delaware LLC with its main headquarters in
 24 Charleston, South Carolina, but GREP denies that it managed Zeff’s apartment complex
 25 during the subject tenancy. GREP also denies that it is or ever was Zeff’s landlord and
 26 denies that it charged and/or collected any fees/penalties described in the Complaint. In

1 addition, GREP denies that it was responsible for the timely return of Zeff's security
 2 deposit. The remaining allegations in paragraph 9 either call for a legal conclusion and no
 3 response is required or GREP lacks sufficient information or belief to answer the
 4 allegations, and on that basis denies each and every allegation contained therein.

5 **ADDITIONAL FACTS COMMON TO CLASS MEMBERS**

6 10. GREP denies that it managed Zeff's apartment complex during the subject
 7 tenancy and therefore denies that it engages in the practices described in paragraph 10.
 8 The remaining allegations in paragraph 10 either call for a legal conclusion and no
 9 response is required or GREP lacks sufficient information or belief to answer the
 10 allegations, and on that basis denies each and every allegation contained therein.

11 11. GREP denies that it managed Zeff's apartment complex during the subject
 12 tenancy and therefore denies that it engaged in the practices described in paragraph 11.

13 12. GREP denies that it managed Zeff's apartment complex during the subject
 14 tenancy and therefore denies that it engaged in the practices described in paragraph 12.

15 13. GREP denies that it managed Zeff's apartment complex during the subject
 16 tenancy and therefore denies that it engaged in the practices described in paragraph 13.

17 14. GREP denies that it managed Zeff's apartment complex during the subject
 18 tenancy and therefore denies that it engaged in the practices described in paragraph 14.

19 15. GREP denies that it managed Zeff's apartment complex during the subject
 20 tenancy and therefore denies that it engaged in the practices described in paragraph 15. As
 21 to the remaining allegations in paragraph 15, GREP lacks sufficient information or belief
 22 to answer the allegations, and on that basis denies each and every allegation contained
 23 therein.

24 16. GREP denies that it managed Zeff's apartment complex during the subject
 25 tenancy and therefore denies that it engaged in the practices described in paragraph 16. As
 26 to the remaining allegations in paragraph 16, GREP lacks sufficient information or belief
 27 to answer the allegations, and on that basis denies each and every allegation contained
 28 therein.

1 17. GREP denies that it managed Zeff's apartment complex during the subject
 2 tenancy and therefore denies that it assessed any "illegal penalties." In addition, the
 3 allegation that GREP assessed an "illegal" penalty calls for a legal conclusion and, on that
 4 basis, GREP denies such allegation. As to the remaining allegations in paragraph 17,
 5 GREP lacks sufficient information or belief to answer the allegations, and on that basis
 6 denies each and every allegation contained therein.

7 18. GREP denies that it managed Zeff's apartment complex during the subject
 8 tenancy and therefore denies that it has failed to comply with any applicable laws,
 9 including Civil Code § 1950.5. The remaining allegations in paragraph 18 either call for a
 10 legal conclusion and no response is required or GREP lacks sufficient information or belief
 11 to answer the allegations, and on that basis denies each and every allegation contained
 12 therein.

13 19. GREP denies that it managed Zeff's apartment complex during the subject
 14 tenancy and therefore denies that it has "virtually unchecked power to collect whatever fee
 15 it wants, when it wants, no matter how illegal it may be." GREP denies that it does not
 16 comply with all applicable laws. The remaining allegations in paragraph 19 either call for
 17 a legal conclusion and no response is required or GREP lacks sufficient information or
 18 belief to answer the allegations, and on that basis denies each and every allegation
 19 contained therein.

20 20. GREP denies that it managed Zeff's apartment complex during the subject
 21 tenancy and therefore denies that it engaged in the practices described in paragraph 20.
 22 The remaining allegations in paragraph 20 either call for a legal conclusion and no
 23 response is required or GREP lacks sufficient information or belief to answer the
 24 allegations, and on that basis denies each and every allegation contained therein.

25 21. GREP denies the allegations in paragraph 21 of the Complaint.

26 22. GREP denies that it managed Zeff's apartment complex and therefore denies
 27 that it is subject to the analysis under Cal. Civ. Code § 1671(d) in relation to Zeff's subject
 28

1 tenancy. The remaining allegations in paragraph 22 call for a legal conclusion and no
 2 response is required.

3 23. GREP denies that “it is not difficult or infeasible to calculate damages from
 4 late rent.” The remaining allegations in paragraph 23 either call for a legal conclusion and
 5 no response is required or GREP lacks sufficient information or belief to answer the
 6 allegations, and on that basis denies each and every allegation contained therein.

7 24. GREP denies that it managed Zeff’s apartment complex during the subject
 8 tenancy and therefore denies that it engaged in the practices described in paragraph 24.
 9 The remaining allegations in paragraph 24 either call for a legal conclusion and no
 10 response is required or GREP lacks sufficient information or belief to answer the
 11 allegations, and on that basis denies each and every allegation contained therein.

12 25. GREP denies that it managed Zeff’s apartment complex during the subject
 13 tenancy and therefore denies that it engaged in the practices described in paragraph 25.
 14 GREP also denies that GREP’s alleged practices have “cost Plaintiff, and many class
 15 members in the aggregate, millions of dollars.”

CLASS ALLEGATIONS

16 26. GREP denies that this action is maintainable as a class action pursuant to
 17 Federal Rules of Civil Procedure 23(a), (b)(1), and/or (b)(3).

18 27. Answering the allegations in paragraph 27 of Zeff’s Complaint, GREP lacks
 19 sufficient information or belief to answer the allegations, and on that basis denies each and
 20 every allegation contained therein.

21 28. The allegations in paragraph 28 call for a legal conclusion and no response is
 22 required.

23 29. GREP denies that Zeff can establish the requisite numerosity to maintain this
 24 action as a class action. The remaining allegations in paragraph 29 either call for a legal
 25 conclusion and no response is required or GREP lacks sufficient information or belief to
 26 answer the allegations, and on that basis denies each and every allegation contained
 27 therein.

1 30. GREP denies that it manages apartment complexes in California and
 2 therefore denies the allegations in paragraph 30 of the Complaint.

3 31. The allegations in paragraph 31 either call for a legal conclusion and no
 4 response is required or GREP lacks sufficient information or belief to answer the
 5 allegations, and on that basis denies each and every allegation contained therein.

6 32. GREP denies that common questions of law and fact predominate as
 7 required to maintain this action as a class action. GREP denies that it manages apartment
 8 complexes in California and therefore denies it “set” fees or engaged in any conduct
 9 described in paragraph 32. GREP also denies that it violated any laws or public policies.
 10 The remaining allegations in paragraph 32 either call for a legal conclusion and no
 11 response is required or GREP lacks sufficient information or belief to answer the
 12 allegations, and on that basis denies each and every allegation contained therein.

13 33. GREP denies that Zeff can establish the requisite typicality to maintain this
 14 action as a class action. GREP denies that it manages apartment complexes in California
 15 and therefore denies that it “charged everyone the same penalty for the same reasons (or
 16 lack thereof).” The remaining allegations in paragraph 33 either call for a legal conclusion
 17 and no response is required or GREP lacks sufficient information or belief to answer the
 18 allegations, and on that basis denies each and every allegation contained therein.

19 34. GREP denies that this action is suitable for class certification and denies that
 20 “a class action is superior to other available means for the fair and efficient adjudication of
 21 this controversy.” GREP denies that common questions of law and fact predominate over
 22 questions affecting only individual class members. The remaining allegations in paragraph
 23 34 either call for a legal conclusion and no response is required or GREP lacks sufficient
 24 information or belief to answer the allegations, and on that basis denies each and every
 25 allegation contained therein.

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FIRST CAUSE OF ACTION

(Imposition of an Illegal Penalty – Cal. Civ. Code § 1671)

3 35. Answering paragraph 35 of Zeff's Complaint, GREP incorporates by
4 reference its responses to paragraphs 1 through 34, inclusive, of Zeff's Complaint.

5 36. GREP denies that it managed Zeff's apartment complex and therefore denies
6 that it is a party to Zeff's lease during the subject tenancy. GREP denies that it is subject
7 to analysis under Cal. Civ. Code § 1671(c)(2) in relation to Zeff's subject tenancy. GREP
8 lacks sufficient information or belief to answer the remaining allegations in paragraph 36,
9 and on that basis denies each and every allegation contained therein.

10 37. The allegations in paragraph 37 call for a legal conclusion and no response is
11 required.

12 38. GREP denies that it managed Zeff's apartment complex during the subject
13 tenancy and therefore denies that it is responsible for the late fee policy challenged in this
14 action. However, GREP denies that actual damages sustained due to delinquent payment
15 of rent or other outstanding balances are "neither impracticable nor extremely difficult to
16 fix" and that the late fee policy at the subject property is not the result of a reasonable
17 effort to estimate fair compensation for actual damages sustained. GREP lacks sufficient
18 information or belief to answer the remaining allegations in paragraph 38, and on that basis
19 denies each and every allegation contained therein.

20 39. GREP denies that the late rent policy at the subject property is unlawful
21 pursuant to California Civil Code section 1671(d). The remaining allegations in paragraph
22 39 call for a legal conclusion and no response is required.

SECOND CAUSE OF ACTION

(Illegal Deductions from Security Deposits – Cal. Civ. Code § 1950.5)

25 40. Answering paragraph 40 of Zeff's Complaint, GREP incorporates by
26 reference its responses to paragraphs 1 through 39, inclusive, of Zeff's Complaint.

27 41. The allegations in paragraph 41 call for a legal conclusion and no response is
28 required.

42. GREP denies the allegations in paragraph 42 of the Complaint.

43. GREP denies that it engaged in the “course of conduct described above.”

3 The remaining allegations in paragraph 43 either call for a legal conclusion and no
4 response is required or GREP lacks sufficient information or belief to answer the
5 allegations, and on that basis denies each and every allegation contained therein.

6 44. GREP denies that it acted in bad faith within the meaning of Civil Code
7 section 1950.5(1). The remaining allegations in paragraph 44 call for a legal conclusion
8 and no response is required.

THIRD CAUSE OF ACTION

(Violation of California's Unfair Competition Law – Cal. Bus. & Prof.

Code §§ 17200, *et seq.*)

12 45. Answering paragraph 45 of Zeff's Complaint, GREP incorporates by
13 reference its responses to paragraphs 1 through 44, inclusive, of Zeff's Complaint.

14 46. GREP denies that it has engaged in unlawful, unfair, or fraudulent business
15 acts or practices within the meaning of California Business and Professions Code section
16 17200, *et seq.* and California Civil Code section 1671. The remaining allegations in
17 paragraph 46 call for a legal conclusion and no response is required.

18 47. GREP denies that it managed Zeff's apartment complex during the subject
19 tenancy and therefore denies that it engaged in the practices described in paragraph 47.
20 GREP also denies that the late fee policy or tenant security deposit practices at the subject
21 property are "driven purely by anticipated profits and without regard to their legality."
22 The remaining allegations in paragraph 47 either call for a legal conclusion and no
23 response is required or GREP lacks sufficient information or belief to answer the
24 allegations, and on that basis denies each and every allegation contained therein.

25 48. GREP denies that it manages apartment complexes in California and
26 therefore denies that it engages in the practices described in paragraph 48. The remaining
27 allegations in paragraph 48 either call for a legal conclusion and no response is required or

1 GREP lacks sufficient information or belief to answer the allegations, and on that basis
 2 denies each and every allegation contained therein.

3 49. GREP denies that it manages apartment complexes in California and
 4 therefore denies that it engages in the practices described in paragraph 49. The remaining
 5 allegations in paragraph 49 either call for a legal conclusion and no response is required or
 6 GREP lacks sufficient information or belief to answer the allegations, and on that basis
 7 denies each and every allegation contained therein.

8 50. GREP denies that “Plaintiff and all Class members have suffered injury in
 9 fact and lost money or property” as a result of GREP’s business acts or practices. The
 10 remaining allegations in paragraph 50 either call for a legal conclusion and no response is
 11 required or GREP lacks sufficient information or belief to answer the allegations, and on
 12 that basis denies each and every allegation contained therein.

13 51. GREP denies that it “has reaped unfair benefits and illegal profits” as a result
 14 of “unlawful business acts and practices.” The remaining allegations in paragraph 51
 15 either call for a legal conclusion and no response is required or GREP lacks sufficient
 16 information or belief to answer the allegations, and on that basis denies each and every
 17 allegation contained therein.

18 52. The allegations in paragraph 52 call for a legal conclusion and no response is
 19 required.

20 53. GREP denies the allegations in paragraph 53 of the Complaint.

21 54. The allegations in paragraph 54 call for a legal conclusion and no response is
 22 required.

23 55. GREP denies the allegations in paragraph 55 of the Complaint.

24 56. GREP denies that it manages apartment complexes in California and

25 therefore denies that it engages in “unlawful late fee and security deposit policies.” The
 26 remaining allegations in paragraph 56 either call for a legal conclusion and no response is
 27 required or GREP lacks sufficient information or belief to answer the allegations, and on
 28 that basis denies each and every allegation contained therein.

FOURTH CAUSE OF ACTION

(Unjust Enrichment/Quasi-Contract)

3 57. Answering paragraph 57 of Zeff's Complaint, GREP incorporates by
4 reference its responses to paragraphs 1 through 56, inclusive, of Zeff's Complaint.

5 58. No response is required to the allegations in paragraph 58 of the Complaint.

6 59. GREP denies the allegations in paragraph 59 of the Complaint.

7 60. GREP denies the allegations in paragraph 60 of the Complaint.

8 61. GREP denies the allegations in paragraph 61 of the Complaint.

9 62. GREP denies that it managed Zeff's apartment complex during the subject
10 tenancy and therefore denies that it retained revenues derived from Zeff and his fellow
11 tenants. The remaining allegations in paragraph 62 either call for a legal conclusion and
12 no response is required or GREP lacks sufficient information or belief to answer the
13 allegations, and on that basis denies each and every allegation contained therein.

14 63. GREP denies that it managed Zeff's apartment complex during the subject
15 tenancy and therefore denies that it retained revenues derived from Zeff and his fellow
16 tenants. The remaining allegations in paragraph 63 call for a legal conclusion and no
17 response is required.

FIFTH CAUSE OF ACTION

(Declaratory Judgment of Invalidity of the Late Rent Penalties)

20 64. Answering paragraph 64 of Zeff's Complaint, GREP incorporates by
21 reference its responses to paragraphs 1 through 63, inclusive, of Zeff's Complaint.

22 65. The allegations in paragraph 65 call for a legal conclusion and no response is
23 required.

24 66. GREP denies that it managed Zeff's apartment complex during the subject
25 tenancy and therefore denies that its "late fee policies and practices" are at issue in this
26 action. The remaining allegations in paragraph 66 call for a legal conclusion and no
27 response.

67. The allegations in paragraph 67 call for a legal conclusion and no response is required.

3 68. The allegations in paragraph 68 either call for a legal conclusion and no
4 response is required or GREP lacks sufficient information or belief to answer the
5 allegations, and on that basis denies each and every allegation contained therein.

6 69. The allegations in paragraph 69 call for a legal conclusion and no response is
7 required.

AFFIRMATIVE DEFENSES

9 GREP asserts the following separate and distinct affirmative defenses as a
10 preliminary response to Zeff's Complaint, to preserve its rights, and to preclude any claim
11 of waiver. None of the allegations supporting these affirmative defenses should be
12 construed as any admission by GREP regarding the facts relevant to this action. By
13 alleging these affirmative defenses, GREP does not admit that it has the burden of proof
14 and/or persuasion with respect to any of the matters stated in the affirmative defenses.

FIRST AFFIRMATIVE DEFENSE

Failure to State a Claim

17 Zeff fails to state facts sufficient to state a claim or any cause of action.

SECOND AFFIRMATIVE DEFENSE

Failure to Join Indispensable Parties

20 Zeff has failed to join necessary and indispensable parties to this action, including
21 all owners of all properties affected by his class action claims. The owners of the
22 properties are parties to the lease agreements containing the allegedly improper late fee
23 provisions. The owners of the properties are the entities who receive and retain the late
24 fees.

THIRD AFFIRMATIVE DEFENSE

Due Process

27 Zeff's claims fail as to unnamed property owners and property managers who have
28 the right to defend themselves in this action.

1 **FOURTH AFFIRMATIVE DEFENSE**

2 *Standing*

3 Zeff and/or the putative class lack standing to recover as they have not suffered an
4 injury-in-fact. Zeff also lacks standing to represent putative class members who did not
5 reside at Zeff's apartment complex.

6 **FIFTH AFFIRMATIVE DEFENSE**

7 *Arbitration/Class Action Waiver*

8 Zeff's claims and/or the claims of the putative class are subject to an enforceable
9 arbitration provision and class action waiver.

10 **SIXTH AFFIRMATIVE DEFENSE**

11 *Compliance with the Law*

12 GREP's conduct was prescribed by law and GREP complied with that law. GREP
13 is therefore shielded from liability.

14 **SEVENTH AFFIRMATIVE DEFENSE**

15 *Validity*

16 The late fees at the subject property are valid.

17 **EIGHTH AFFIRMATIVE DEFENSE**

18 *Estoppel*

19 The doctrine of estoppel bars Zeff from recovering.

20 **NINTH AFFIRMATIVE DEFENSE**

21 *Unclean Hands*

22 The doctrine of unclean hands bars Zeff from recovering.

23 **TENTH AFFIRMATIVE DEFENSE**

24 *Laches*

25 Zeff's unreasonable delay bars Zeff from recovering under the doctrine of laches.

26 **ELEVENTH AFFIRMATIVE DEFENSE**

27 *Waiver*

28 The doctrine of waiver bars Zeff from recovering.

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 *Voluntary Payment*

3 The voluntary payment doctrine bars Zeff and the putative class from recovering.

4 **THIRTEENTH AFFIRMATIVE DEFENSE**

5 *Contributory Negligence/Partial Fault of Plaintiff*

6 If Zeff has sustained any injury or is entitled to any damages under the
7 circumstances alleged in the Complaint, or in any other respect, the intentional acts,
8 negligence, carelessness, lack of due care, fault and/or unreasonable conduct of Zeff
9 contributed in whole or in part to such damages. Zeff is therefore wholly, or partially,
10 responsible for any damages caused thereby.

11 **FOURTEENTH AFFIRMATIVE DEFENSE:**

12 *Failure to Mitigate/Doctrine of Avoidable Consequences*

13 Zeff has failed to mitigate his damages and his claims are barred, or his recovery
14 should be reduced, pursuant to the doctrine of avoidable consequences.

15 **FIFTEENTH AFFIRMATIVE DEFENSE:**

16 *Consent*

17 Zeff consented to the actions of which he now complains.

18 **SIXTEENTH AFFIRMATIVE DEFENSE:**

19 *Privilege*

20 GREP's actions were privileged, and thus shielded from liability.

21 **SEVENTEENTH AFFIRMATIVE DEFENSE:**

22 *Justification*

23 GREP's actions were justified, and thus shielded from liability.

24 **EIGHTEENTH AFFIRMATIVE DEFENSE:**

25 *Lack of Duty*

26 GREP owed no duty to Zeff.

1 **NINETEENTH AFFIRMATIVE DEFENSE:**

2 *Not “Unfair” Under Section 17200*

3 GREP’s actions were not “unfair” within the meaning of Section 17200 *et seq.* of
4 the California Business and Professions Code.

5 **TWENTIETH AFFIRMATIVE DEFENSE:**

6 *Not “Fraudulent” Under Section 17200*

7 GREP’s actions were not “fraudulent” within the meaning of Section 17200 *et seq.*
8 of the California Business and Professions Code.

9 **TWENTY-FIRST AFFIRMATIVE DEFENSE:**

10 *Not “Unlawful” Under Section 17200*

11 GREP’s actions were not “unlawful” within the meaning of Section 17200 *et seq.* of
12 the California Business and Professions Code.

13 **TWENTY-SECOND AFFIRMATIVE DEFENSE:**

14 *No Unjust Enrichment*

15 Because Zeff has not suffered any losses and GREP has not been unjustly enriched
16 as a result of any action or inaction by GREP or their agents, Zeff is not entitled to any
17 disgorgement or restitution.

18 **TWENTY-THIRD AFFIRMATIVE DEFENSE:**

19 *No Class Action*

20 Class treatment is inappropriate due to lack of commonality, typicality, and
21 adequacy, and because a class action is not otherwise a superior method of adjudicating
22 this dispute.

23 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

24 *Res Judicata/Collateral Estoppel*

25 Zeff’s claims are barred to the extent that a court of competent jurisdiction already
26 determined the claims or issues asserted herein.

1 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

2 *No Damages*

3 Zeff has not suffered, nor will he suffer, any injury from anything done by GREP.

4 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

5 *Offset*

6 Zeff's damages must be offset by the amounts Zeff owes to, and/or by the amount
7 of damages incurred by, GREP.

8 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

9 *Superseding Cause*

10 The damages sustained by Zeff, if any, were the result of actions of Zeff or third
11 parties constituting an intervening or superseding cause precluding any liability on the part
12 of GREP.

13 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

14 *Fault of Third Parties*

15 If Zeff sustained any injuries or is entitled to any damages under the circumstances
16 alleged in his Complaint, or in any other respect, the negligent and/or intentional acts and
17 omissions of third parties contributed in whole or in part to the damages complained of by
18 Zeff. GREP is entitled to a judicial determination of the proportion of fault of those third
19 parties and to a reduction of damages, if any, awarded to Zeff in proportion to that fault.

20 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

21 *Ratification*

22 Zeff's claims are barred because Zeff ratified the conduct complained of in his
23 Complaint.

24 **THIRTIETH AFFIRMATIVE DEFENSE**

25 *Reasonableness and Good Faith of Defendant*

26 Zeff's claims are barred by the fact that GREP acted reasonably and in good faith at
27 all times material herein, based on the relevant facts and circumstances known by GREP at
28 the time GREP so acted.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Assumption of the Risk

Zeff assumed the risk of loss associated with the activity or transaction.

RESERVATION OF RIGHT TO AMEND

GREP presently has insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses. GREP reserves the right to amend its answer to incorporate additional affirmative defenses at a later time.

PRAYER FOR RELIEF

WHEREFORE, GREP prays for relief as follows:

1. That Zeff take nothing by reason of his Complaint;
 2. That judgment be entered in GREP's favor;
 3. That GREP be awarded their reasonable costs and, if applicable, fees; and
 4. That GREP be awarded such other and further relief as this Court deems just

and proper.

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By

s/ Mark G. Racker

MARK G. RACKERS

MELISSA A. FREELING

Attorneys for GREYSTAR CALIFORNIA, INC.
and improperly named GREYSTAR REAL
ESTATE PARTNERS, LLC

PROOF OF SERVICE

**United States District Court for the Northern District of California
Zachary Zeff v. Greystar Real Estate Partners, LLC
3:20-cv-07122-EMC**

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Diego, State of California. My business address is 501 West Broadway, 19th Floor, San Diego, CA 92101-3598.

On March 4, 2021, I served true copies of the following document(s) described as

GREYSTAR REAL ESTATE PARTNERS, LLC'S ANSWER TO COMPLAINT

on the interested parties in this action as follows:

SERVICE LIST

11 Craig M. Nicholas
12 Alex Tomasevic
12 Ethan T. Litney
13 Nicholas & Tomasevic, LLP
225 Broadway, 19th Floor
San Diego, CA 92101

Attorney for Plaintiff ZACHARY ZEFF
Tel: (619) 325-0492
Fax: (619) 325-0496
Email: cniicholas@nicholaslaw.org
atomasevic@nicholaslaw.org
elitnev@nicholaslaw.org

15 BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the
document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the
case who are registered CM/ECF users will be served by the CM/ECF system. Participants
in the case who are not registered CM/ECF users will be served by mail or by other means
permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America
18 that the foregoing is true and correct and that I am employed in the office of a member of
the bar of this Court at whose direction the service was made.

Executed on March 4, 2021, at San Diego, California.

Pamela Parker

PAMELA PARKER